***HON'BLE SRI JUSTICE B.PRAKASH RAO**

AND

HON'BLE SRI JUSTICE D.APPARAO

+WRIT APPEAL NOs.541, 542 and 543 of 2005

%Dated 28.04.2006

P.Parameswaran Potti .. Appellant

And

$ The Chairman and Managing Director,

Singareni Collieries Company Limited,

Hyderabad and 2 others. .. Respondents

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>HEAD NOTE:

! Counsel for the Appellant : Sri M.Surendra Rao for

Sri Ch.Ravinder

^Counsel for R-2 and R-3 : Sri K.Srinivasa Murthy,

G.P. for GAD

Counsel for R-1 : Sri AK Jayaprakash Rao

? Cases referred:

1. AIR 1985 SUPREME COURT 1351
2. AIR 1987 SUPREME COURT 2267
3. 1994 (1) S.L.R. 788
4. AIR 1996 SUPREME COURT 352
5. AIR 1992 S.C. 1806
6. (1974) 1 S.C.R. 797
7. AIR 2005 SUPREME COURT 2853

HONOURABLE SRI JUSTICE B.PRAKASH RAO

AND

HONOURABLE SRI JUSTICE D.APPARAO

WRIT APPEAL NOs. 541, 542 & 543 of 2005

Between:

P.Parameswaran Potti .. Appellant

And

1. The Chairman and Managing Director,
Singareni Collieries Company Limited,
Hyderabad and 2 others. .. Respondents

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COMMON JUDGMENT (Per Hon'ble Sri Justice D.Apparao):

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The unsuccessful appellant preferred these appeals against a common order of the learned Single Judge of this Court, dated 17-02-2005 in W.P.Nos.14614, 14615 and 14616 of 2004 upholding the selection of R-3 in all writ petitions to the posts of Director (Planning and Projects)/Chief General Manager of Singareni Collieries Company Ltd ('SCCL' for short) in preference to him.

2. The facts lie in a narrow compass. The appellant was working as General Manager, having been promoted in the year 2001. When vacancy for the posts of Director (Planning and Projects)/Chief General Manager fell vacant, interviews were held on 02-08-2004 in the Chambers of Chief Secretary, Government of Andhra Pradesh, Secretariat, Hyderabad. Singareni Collieries Company Functional Directors' Selection Rules ('Rules' for short) prescribe selection to the said post to be made basing on an interview. The grievance of the appellant is in spite of having excellent record of service and no adverse remarks through out his career, and he being the senior most and meritorious, R-3 was selected. In fact, he ought to have been selected in preference to the 3rd respondent. Therefore, he sought writ of mandamus directing the respondents to promote/select him as Director and declare the proceedings

appointing R-3, in all the writ petitions, as illegal and arbitrary and *mala fide*.

3. SCCL Management denied that the writ petitioner is meritorious than the others who were selected in the interview. Since the selection was by way of interview, the seniority of the employee has no relevance. As there was no violation of any rule or regulation, Article 226 of the Constitution of India can not be invoked. The Selection Committee consists of eminent persons from various fields and therefore, *mala fides* could not be attributed against them. The question of declaring the proceedings as illegal, arbitrary will not arise.

4. The learned Single Judge opined that the Selection Committee considered the performance of the officers in the interview and selected R-3 in all the writ petitions. While considering merits, they have considered Performance Appraisal Reports ('PARs' for short). However, it was not the only consideration for selecting the candidates. Since there was no bias or *mala fides* attributed against the selection committee and the selection being made as per Rule 8 of the Rules, the same could not be assailed. Consequently, the learned Single Judge dismissed the writ petitions.

5. Assailing the findings, these writ appeals are filed contending that since the selection to the post of Director is by way of interview, no other factor should be taken into consideration. The Rules do not permit such a course to be taken. PARs were maintained only for the purpose of human resources development. Since the committee did not disclose the criteria for their selection, it should be held arbitrary. In fact, R-3 was not having any experience in the planning department. The entire selection process was vitiated from incurable legal infirmity. Since there was no assessment of merit of each individual by the selection committee, the very selection itself was vitiated. The selection obviously was for some others consideration. At any rate not on merit. Therefore, prayed that the selection be set aside.

6. It is not in dispute that the selection of Director (Planning and Project)/Chief General Manager is by way of interview. The selection is governed by Rules, which are in force with effect from 13-08-1994. For benefit, I reproduce Rule 8 of the said Rules.

Rule.8 Selection Process:

"The Committee shall interview the eligible candidates (not more than 5 candidates per vacancy) and select the suitable person from the internal candidates.

In case there are no eligible internal candidates, the post(s) will be advertised in the leading News Papers. The up to date C.R.Dossiers of the candidates called for interview will be obtained from their employer(s). The Committee shall interview the eligible candidates (not more than 5 candidates per vacancy) and select the suitable person(s).

After the Selection, the Company shall issue orders and place the matter before the Board where necessary for co-opting the Functional Director as a member; of the Board. The respective Governments also will be informed."

7. Rule 2 of the Rules prescribes the members for selection of the personnel, which reads as follows:

"In pursuance of the provisions in the tripartite agreement entered into between the Government of India, the Government of A.P. and the Singareni Collieries Company, the appointment of Functional Directors shall be made by the company by a committee to be constituted by the Government of A.P. including a representative of the Government of India. The selection committee consists of the following personnel for selection of the post of Functional Directors:

1. Chief Secretary, Government of A.P. - Chairman.
2. Principal Secretary to the Government, Energy Department-Member.
3. Chairman and Managing Director, Singareni Collieries Company Limited-Convener.
4. Representative from the Department of Coal, Government of India-Member.
5. An expert in the relevant discipline/field from any organization/institute of national importance depending upon the function for which a Director is to be selected-Member."

8. Rule 8 of the Rules does not prescribe any other guidelines as to the selection except an interview to be conducted by committee. This procedure is for internal candidates. Where there are no eligible candidates in the company, the post shall be thrown open to the outsiders by advertising in the leading News Papers. No doubt, those candidates called for interview will be

interviewed, but C.R.Dossiers of those candidates will be scrutinized. In other words, there is no specific requirement that C.R.Dossiers of their own employees are to be scrutinized, when interview is conducted for internal candidates.

9. The learned Single Judge after verifying the records observed:

> " To verity whether the selection process is vitiated by *mala fides* or failure to exercise the discretion or abuse of discretionary power, the records have been looked into by this Court. The selection committee consisting of Chief Secretary, Government of A.P, Principal Secretary, Energy Department, Government of A.P.,; Chairman and Managing Director of SCCL, Bilaspur met on 02-08-2004 in the chambers; of Chief Secretary, Government; of A.P. where under the petitioner and the 3rd respondent ;in all the writ petitions were considered for the post of Director (Planning and Projects). The selection committee after perusal of the Performance ;Appraisal Reports for the past 5 years and after interviewing all the candidates and after careful consideration of their performance, found that the respondent No.3 in all the writ petitions is suitable for promotion. The procedure adopted by the selection committee in respect ;of all the candidates is that they have perused the Performance Appraisal Reports for the past 5 years of each individual who was called for interview and after interviewing the 5 candidates the selections were made. Out of 5 members committee, 4 members participated in the interview. Admittedly the quorum for the meeting of the committee is 3 including the Chairman. Considering the performance in the interview only the officers were selected. The Performance Appraisal Reports for the past 5 years were placed before the selection committee for perusal. May be the Performance Appraisal Reports are one; of the considerations but that is not the sole criterion for selecting the candidate. The selection was purely based upon the performance in the interview. The minutes of the meeting do not indicate about the performance of the individual There cannot be any dispute that the Departmental Promotion Committee is the High Level Committee and after considering the merits of the respective candidates the High Level Committee selected the 3rd respondent in all the writ petitions for promotion. When the High Level Committee has considered the respective merits of the candidates for promotion, this court cannot sit over the assessment made by the High Level Committee as an appellate authority. Since the Rules do not contemplate for selecting a candidate, the High Level Committee thought it fit that the 3rd respondent is suitable for promotion to the post of Chief General Manager considering their performance in the interview. No doubt, as seen from the proceedings of the D.P.C., it does not indicate the performance of each candidate in the interview or the procedure followed for interviewing the candidate but it is not a case of arbitrary exercise of

power in selecting the candidate. No *mala fides* are attributed to any one of the committee members. Out of 4 members 3 members are not from the Singareni Collieries. Looking at the constitution of the selection committee would indicate that there was no scope for arbitrary exercise of power or favoritism."

10. The appellant claims that he was the senior most employee and his service record was excellent, and thus satisfied both the criteria seniority as well as merit. He ought to have been selected in preference to the other candidates. At any rate, no basis was made out as to the criteria for selection. When the appellant questioned the selection process, the respondent, by filing counter made a mention that PARs of all the candidates were also placed before the Selection Committee. Considering the merit of the 3rd respondent, the committee has selected him.

11. Taking cue from this, the learned counsel for the appellant contended that the selection being based on PARs, contrary to Rule 8 of the Rules, the entire selection process is vitiated. Evidently, PARs can be considered for outsiders. The Committee ought not to have based their selection basing on PARs. The learned counsel further contended that the Selection Committee cannot prescribe its own procedure, contrary to the Rules. When interview was contemplated, it had to strictly follow the merit as per the interview conducted. They are not entitled to prescribe some other procedure viz., relying PARs, which criteria could not be made by virtue of Rule 8 of the Rules as prescribed above.

12. He developed his submissions relying decision after decision mainly these cases where the selections were based on marks obtained in the light of the written examination followed by oral interview as per statutory rules. However, where the selections were made only on the basis of interview, the Supreme Court held consistently that there is no need to record any reason on the selection or non selection of the person in the absence of statutory provision.

13. In this regard, he relied ***UMESH CHANDRA SHUKLA v. UNION OF INDIA AND OTHERS.*** It was a case where recruitment was made to Delhi

Judicial Service. An examination was conducted and a list of candidates securing required qualifying marks was prepared. The High Court having considered and appreciated that a few candidates who had otherwise scored very high marks would have to be kept out of the zone of consideration for final selection by reason of their having secured one or two marks below the aggregate or the qualifying marks prescribed for the particular paper, decided that "moderation of two marks in each paper to every candidate of the 1984, Delhi Judicial Service be done". The point that arose for consideration was whether the High Court, in the circumstances, had the power to add two marks to the marks obtained in each paper by way of 'moderation'. While accepting that the High Court was entrusted with the duty of conducting the competitive examination by virtue of Rule 13 of the Rules, however, opined it had no power to prescribe the procedure contrary to the Rules. Their Lordship opined that addition of two marks by way of moderation to the marks obtained in any written paper or to the aggregate of the marks in order to make a candidate eligible to appear in the viva voce test would indirectly amount to an amendment; of Cl.(6) of the Appendix. Such amendment to the Rules could be made under Art. 234 only by the Lt. Governor (Administrator) after consulting the High Court in that regard. Their Lordships are of the view that the Selection Committee had no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. Therefore, the list prepared under Rule 18 of the Rules was not legal.

14. We may herein state that that was a case where the criteria was fixed for selecting a candidate viz., by way of written examination followed by *Viva Voce* maintaining minimum marks to be obtained. It was held that since there were rules necessarily, the Selection Committee had to follow them.

15. He relied yet another case ***SHRI DURGACHARAN MISRA v. STATE OF ORISSA AND OTHERS.*** It also pertains to the selection of the candidates for Subordinate Judicial Service governed by the Orissa Judicial Service Rules, 1964. The Rules provide a *Viva Voce* without prescribing any minimum qualifying marks. However, Public Service Commission has fixed a minimum qualifying marks by *Viva Voce* test. They have excluded candidates for not scoring marks not so prescribed. Their Lordships considered the Rules made

there under and opined that this selection was not in accordance with the Rules. The Selection Committee cannot prescribe additional requirement for selection either as to the eligibility or as to the suitability. Their Lordships struck down the selection.

16. The learned counsel for the appellant relied still one more case ***K.V.L.KAMESWARI v. ANDHRA UNIVERSITY (A.P.,) REP. BY ITS REGISTRAR AND OTHERS,*** and contended that the High Court can interfere with the decision of Selection Committee where there is illegality or patent material irregularity either in the constitution of the Committee or its procedure. In the said case, the appointment to the post of Professor, Reader and Lecturers in various departments in Andhra University, came up for consideration. Rules were framed. Though a Committee was constituted, it was not in accordance with Section 34-A of the Andhra University Act. Their Lordships held that the petitioner having participated in the proceedings of the Committee, knowing that it was not constituted according to law, she was not entitled to raise the objection about the validity of the Constitution of Committee. However, Their Lordships considering the minutes of the meeting opined that there was no objective criteria on the basis of which the selection was made was disclosed. No marks were allotted to any of the candidate. Their Lordships opined that the selection process was arbitrary and liable to be set aside. It was of the view that the High Court could interfere under Article 226 of the Constitution of India with the decision of the Selection Committee, where there was illegality or patent material irregularity with the Constitution of Committee or its procedure.

17. The learned counsel for the appellants by relying ***DR.KRUSHNA CHANDRA SAHU AND OTHERS v. STATE OF ORISSA AND OTHERS***, contended that when Rules were silent as to the guidelines on the basis of which the selection of the candidate for appointment of post was to be adjudged, the Selection Committee does not have the jurisdiction to lay down the criteria for selection unless they are authorized specifically in that regard by Rules made under Article 309. Basically the function of the rule making authority is to provide the basis for selection. The Selection Committee or the Selection Court cannot be held to have jurisdiction to lay down any standard or basis for selection having amount to legislating the rule of service. Having

observed that the selection was made basing on the character roles opined that these character rolls, however, cannot form the sole basis for determination of the suitability for the post. That was a case where the appointment of junior teachers in Homeopathy Colleges regulated by Orissa Homeopathy Medical Teaching Service (Methods of Recruitment and Conditions of Service) Rules, 1980, were came up for consideration.

The recruitment to the post of Principal of Homeopathy College shall be made by promotion from amongst eligible lecturers on the basis of merit and suitability with due regard to seniority and administrative ability, in consultation with the Commission. It was regulated by Rule 8 (1) of the Rules. Their Lordships indicated that the decision of Selection Committee can be interfered with the only on limited grounds, namely, that there was illegality or material irregularity in the constitution of the Committee or in its procedure vitiating the selection or proved *mala fides* affecting the selection etc.,

Their Lordships after considering that the Selection Committee had considered only the character rolls and observed that "in order to assess the suitability or real worth of a candidate for the post of junior teacher in the college, the basis, namely, the character roll, adopted by the Selection Board was wholly arbitrary besides being without authority or jurisdiction."

18. The learned counsel for the appellant contended that the Selection Committee did not mention as to the criteria under which they had selected R-3 . They did neither award marks nor given a grade. A perusal of the committee's proceedings does not indicate the basis for their selection. The appellant ought to have been selected, he being senior most to R-3. There were no adverse remarks at any time against him. In the light of the fact that the Selection Committee basis on PARs selected R-3, contrary to Rule 8 of the Rules, the selection is liable to be struck down.

19. In all the above decisions, Rules were framed. The Selection Committee transgressing those rules formulated its own rules at the time of selection and selected the candidates. The Courts have considered the selection process *vis a vis* the rules and found that they were contrary to the Rules and therefore, they were struck down.

20. However, where selection is by interview and that there is no rule or

regulation obligating the Selection Committee to record reasons, the Supreme Court consistently held that when selection is by interview, it need not record any reason while selecting the candidate. It need not disclose any reason even. In somewhat similar case in ***NATIONAL INSTITUTE OF MENTAL HEALTH AND NEURO SCIENCES v. K.KALYANA RAMAN***, where the Supreme Court dealt with the selection for the post of Professor of Neurosurgeon by an interview. The High Court quashed the proceedings of Selection Committee in appointing one of the persons as Professor of Neurosurgeon at the NIMHANS, on the ground that the Selection Committee has not given any reason to establish any rational nexus between the facts said to have been considered by the Selection Committee and the conclusion drawn by it shows that the respondent had not received fair and reasonable justice at the hands of the Selection Committee. Their Lordships upturned the order and held that the function of the Selection Committee is neither judiciary nor adjudicatory, it is purely administrative. There is no rule of regulation requiring Selection Committee to record reason. In the absence of any such legal requirement, the selection made to record the reasons cannot be found fault with.

21. I n ***UNION OF INDIA v. MOHAN LAL CAPOOR,*** Their Lordships opined that in cases covered by statutory requirement to record the reasons, it should be by adhering to those regulations. Their Lordships held that the Capoor's case cannot, therefore, be construed as an authority for the proposition that there should be reason formulated for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Their Lordships also opined that it was proper consideration and the respondent was treated fairly. While setting aside the Judgment, Their Lordships held that it should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion.

22. The above said decision was followed in ***U.P.S.C. v. K.RAJAIAH.*** In that case, the promotion of the post of Superintendent of Police was struck down by the High Court on the ground that the Selection Committee omitted to

consider the relevant material including the service records except considering the ACRs only contrary to the provisions contained in Regulation 5(4) & 5 (5) of the Indian Police Service (Appointment by Promotion) Regulations, 1955. Their Lordships reversing the said order opined that perusal of ACRs was a function incidental to the selection process. Their Lordships observed “No doubt, the Committee is by and large guided by the classification adopted by the State Government but, for good reasons, the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs. That is what has been done in the instant case in respect of the year 1993-94. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record reasons.” Their Lordships further reiterated “even principles of natural justice do not require an administrative authority or a Selection Committee or an Examiner to record reasons for the selection or non selection of the person in the absence of statutory requirement.

23. Coming to the facts, there was no statutory requirement for the Selection Committee to record the reasons for selecting a candidate. The selection is by an interview. In the process of evaluating the merits of the candidate, it seems, the Committee has also considered the PARs. As pointed out by the learned counsel for the respondent that was not only the criteria, but the Selection Committee has perused these reports also.

24. There was no bar for the Selection Committee from perusing these reports. May be for external candidates, the consideration of PARs is mandatory while it is not so for working employees. The PARs for past years placed before the Selection Committee was obviously for its perusal as observed by the learned Single Judge. May be the PARs are one of the considerations, but that was not the sole criteria for selecting candidates. It was observed that the selection was purely based on the performance in the interview.

25. In the light of the fact that the selection is by a mere interview, when Committee did not record reasons, it cannot be found fault with. We do not see any merits in the contentions raised by the learned counsel for the appellant in this behalf. The case is squarely covered by the two decisions of the Supreme

Court referred to above (cited 5 & 7 supra). As observed by the Supreme Court, having due regard to the limitations inherent in judicial review of selection process by an expert body, there is no scope for intervention by the Courts.

26. In the result, the appeals are dismissed. However, no costs.

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(B.PRAKASH RAO, J)

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April , 2006 (D.APPARAO,J)

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